IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS ADMIRALTY & VICE-ADMIRALTY JURISDICTION

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ADMIRALTY SUIT NO.18 OF 2004

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Chengxi Shipyard
a company incorporated
under the laws of China ...Plaintiffs

v/s.

ICICI Bank Ltd. ...Defendant

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Mr.Sudip Sen with Ashwin Shankar i/b Mr.Ruben A. Fernandes for the Plaintiffs.

Mr.Pradip Sancheti with Mr.B.B.Saraf, Ms.Rajlakshmi Nair and Mr.Sachin Deshmukh i/b M.K.Ambalal & Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 10TH JANUARY,2007

P.C.:

1. The Plaintiff in this suit claims a money decree against the Defendant. According to the Plaintiff, it is a foreign company incorporated under the laws of China and carries on business of constructing and repairing ocean going vessels at their yard.

2. The Defendant is ICICI Bank. According to the Plaintiff, a vessel by name "PEARL PROSPERITY" was brought to the yard of the Plaintiff for repairs by a company SICAL Ships India Pvt.Ltd. The Plaintiff accepted the vessel for repairs at its yard under the impression that SICAL Ships Pvt.Ltd. is the owner of the vessel. According to the Plaintiff, the vessel was repaired, but SICAL Ships Pvt.Ltd. did not pay the repair charges. Ultimately, possession of the vessel was taken by the Defendant. Subsequently, the Plaintiff came to know that SICAL was not the owner of the vessel, but it is the Defendant who is the

owner of the vessel and the vessel was given on lease by Defendant to the said SICAL. According to averments in the plaint, the Defendant is liable to pay the repair charges to the Plaintiff because the Defendant had given implied/express authority to the lessee SICAL to get the vessel repaired and because the Defendant has taken benefit of the repairs that are carried out to its vessel, the Defendant is liable to pay the repair charges.

3. The Defendant has denied its liability by filing a written statement and has raised several objections to the maintainability of the suit.

4. On the basis of the rival pleadings and the documents issues were framed on 21st July, 2005. They are as follows:-

I S S U E S

1. Whether the plaintiffs establish that they have a cause of action against the defendant?

2. Whether the present suit is not maintainable on account of non-joinder of necessary parties?

3. Whether the plaintiffs prove that repair were effected by them to the vessel PEARL PROSPERITY and the quantum of such repairs?

4. If issue 3 is answered in the affirmative, then whether the plaintiffs prove that the defendants are liable in respect of the repairs carried out to the vessel PEARL PROSPERITY?

5. Whether the plaintiffs have proved that the alleged repairs to the vessel M.V. Pearl Prosperity were carried out with the tacit and/or explicit consent of the defendants? (Referred to in para 13 of the plaint)

6. Whether the plaintiffs have a maritime claim against the vessel entitling them for an admiralty action entailing liability in person? (Referred to in para 14(e) of the plaint)

7. Whether the alleged contract entered into between the plaintiffs and SICAL during the

subsistence of lease under the bare boat charter/lease is enforceable against the defendants? (Referred to in para 14(f) of the plaint)

5. The first question that arises for consideration is whether it can be said that the Plaintiff has a cause of action against the Defendant, in the sence that whether there is a privity of contract between the Plaintiff and the Defendant. So far as that aspect of the matter is concerned, only pleading that is to be found in the plaint is in paragraph 14, where the Plaintiff has stated that as owner of the vessel the Defendant had given implied/expressed authority to SICAL to carry out repairs. It is admitted position that there was a written lease-deed executed between the Defendant and the lessee. Therefore, obviously the question whether the Defendant had given authority to the lessee to get the vessel repaired will depend on the terms of the lease deed. Perusal of the verification clause of the plaint shows that this statement has been verified on the basis of personal knowledge. The lease deed has not been produced. In the absence of the lease deed it cannot be said that the person who

had verified the plaint had personal knowledge of the terms in the lease deed about the authority of the lessee to get the vessel repaired. It is thus obvious that there was no privity of contract in so far as repairs of the vessel are concerned between the Plaintiff and the Defendant. In any case, admittedly the vessel was given for repairs by the lessee to the Plaintiff. Therefore, in any case, lessee SICAL would be the necessary party to the suit and as the SICAL has not been joined as a party to the suit and therefore, the suit is liable to be dismissed for non-joinder of necessary party.

6. One more aspect that has to be seen is that I have observed in my order dated 23rd August, 2006 that the documents produced by the Plaintiff to prove that the repairs were actually carried out by the Plaintiff in relation to the vessel are inadmissible in evidence. Thus, the fact that the Plaintiff carried out repairs to the vessel has also not been proved by the Plaintiff.

7. Taking overall view of the matter, therefore, it is clear that the crucial statements made in the plaint have not been verified as required by law.

There is also no evidence led to prove the material facts and even necessary parties have not been joined and therefore, looking at the matter from any point of view, it cannot be said that the Plaintiff has discharged the burden of proof imposed on it for proving any of the issues that have been framed.

8. The suit, therefore, fails and is dismissed. The Plaintiff is directed to pay costs of this suit to the Defendant, as incurred by the Defendant.

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